

### **Remarks**

The Office Action of March 24, 2005 continued to reject all of the claims as being directed to an invention that was anticipated by the disclosure of U. S. Patent 6,190,287 to Nashner.

It is believed that the continued reliance on Nashner comes from a misperception of the terms of the claims of applicant's invention. Accordingly, a new independent Claim 31 has been crafted to more clearly enunciate the invention so that the differences between the claimed invention and the Nashner disclosure are apparent.

As claimed in Claim 31, the method includes steps performed by a computer including defining a role having a measurable performance and a separately measurable skill in which an improvement of the skill at least plausibly improves the performance. The claim language makes a distinction between "performance" and "skill" and highlights the fact that they are separately measurable. Further, the claim points out the relationship between the skill and the performance, in that the skill at least plausibly improves the performance.

This relationship will be clear from the following example. Consider the role of a wide receiver on a professional football team. The performance of a wide receiver can be measured in a statistic such as the number of touchdown catches per game. Various skills that the wide receiver may have may contribute to catching touchdown passes. One such skill is speed, such as may be measured by the individual's time to run a 40-yard dash. Other skills may also go into the overall performance of a wide receiver's ability to catch touchdowns per game, such as having "good hands;" footwork to enable separation from a defender, or the like.

At least plausibly, the speedier the individual is at the 40-yard dash, the higher his touchdown catches per game statistic will be. The 40-yard dash skill and the touchdown catches per game performance are independently measurable. But, at least plausibly, improvements in the skill (time in the 40-yard dash) will improve the performance (touchdown catches per game).

As recited further in Claim 31, once an individual is associated with the role, the individual's skill level is measured and the individual's performance is measured to achieve a first actual performance metric. Using our example, a particular hypothetical individual can run a 40-yard dash in 5 seconds, and his performance metric shows 0.8 touchdown catches per game. The occurrence of an event may be training or another event to assist the individual to run faster.

Then, the performance of the person after that training can be re-assessed, and the improvement in the skill can also be assessed. That is, if the individual now runs a 40-yard dash in 4.5 seconds, that would be a measurable improvement in the skill of running a 40-yard dash. Independently measurable, would be a determination of the individual's metric of caught touchdown passes per game. That might increase to 0.9 touchdown passes per game. Or it might stay the same, or perhaps even drop. The invention provides, as claimed in Claim 31, a method for analyzing a relationship between the first and second performance metric (change in the touchdown catches per game) and the skill (40-yard dash time) of the individual before and after the event occurrence on a computer. From that, a determination can be made whether the event occurrence increased the performance of the individual (touchdown catches per game), based at least partially on their relationship between the first and second actual performance metrics and the skill (40-yard dash time) of the individual.

New claims 32 and 33 have been introduced to parallel the new claim language for a computer software medium and a system that includes a user interface and a central processing unit.

The Nashner patent discloses a system for determining how well a patient is complying with instructions and performing training tasks. To the extent that any broader conclusions about a patient are reached, they are derived directly from the measurement of the patient's performance of the task. Note that at column 5, line 52-57, Nashner says "in a preferred embodiment of the invention, the subject's motivation and the appropriateness of the prescribed training program is determined based on a comparison of the expected training performance and the subject's actual compliance, with the subject serving as his or her own control." Following that statement is a table at the top of column 6 with conclusions about whether the individual is

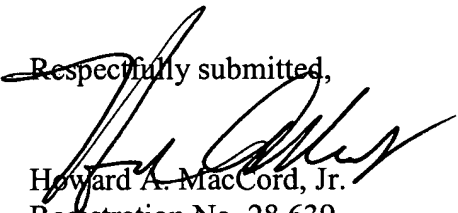
motivated or not. These conclusions are derived from, and not separately measured from, the individual's performance of the training tasks.

Applying Nashner methodology in the case of a wide receiver who has improved his speed from 5 seconds for the 40 to 4.5 seconds, the conclusion would be reached that he would have a higher rate of touchdown catches per game. In other words, the performance of the wide receiver would be assumed to be improved because the skill would be improved.

In applicant's invention, the validity of the assumption can be evaluated and the effect of the event can be determined. Nashner neither discloses nor suggests a system like applicant's.

Accordingly, it is believed that the claims now clearly define over the Nashner reference and the case is now in condition for allowance. Should the examiner have any further small matters requiring resolution, she is encouraged to telephone the undersigned for expeditious handling.

Respectfully submitted,

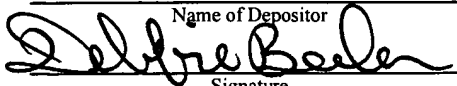
  
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